Supreme Court, U.S.
FILED

No. 941655 APR 10 1995

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

EVANGELIN MARIE MILLER

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

EVANGELIN MARIE MILLER
2255 Watt Avenue, Suite 110
Sacramento, Ca. 95825

1-916-483-3801

Petitioner Attorney *Pro Se*

QUESTIONS PRESENTED

1. Is the absence of recusal remedies for State Supreme Court Justices a violation of due process of law?

2. Is a State Supreme Court which appoints employees to a private party, and by finding against the other party obtains monies for their appointees' employer to reimburse their appointees' salaries and benefits, disqualified to sit on cases involving that party?

3. May a State Supreme Court sign a stipulated order when consent thereto has been withdrawn by a party prior to its approval?

4. Is a stipulation which contains no disclosure of monies demanded and of the relationship of a party to the judge and other conflicts of interest required to be set aside for lack of an informed consent?

5. When the law relied on has been changed by a party subsequent to signing a stipulation but prior to approval by the Court, does due process require that a party be permitted to withdraw her consent to the stipulation?

LIST OF PARTIES

The parties are as follows:

EVANGELIN MARIE MILLER
2255 Watt Avenue, Suite 110
Sacramento, Ca. 95825

1-916-483-3801

Petitioner Attorney *Pro Se*

THE STATE BAR OF CALIFORNIA
555 Franklin Street
San Francisco, Ca. 94102-4498

1-415-561-8200

Respondent

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In The

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October Term, 1994

EVANGELIN MARIE MILLER

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioner Attorney respectfully prays that a writ of certiorari issue to review the judgment of the California Supreme Court, Case No. S043344, entered on March 16, 1995, denying a motion for its recusal and denying a Petition for Review and Application for a Stay. The Petition requested non-approval of a stipulation with the State Bar of California to which consent had been withdrawn, upon discovery by the Petitioner of its undisclosed financial interest in the proceedings.

ORDERS BELOW

The order of the California Supreme Court [1] denying the motion for recusal and the Petitioner's Petition for Review and Application for a Stay and entering an order of suspension of the Petitioner based on a stipulation to which Petitioner had withdrawn her consent is reproduced at Appendix A.

II.

JURISDICTION

The jurisdiction of this Court is involved under 27 U.S.C.A. s. 1257(3). This Petition for writ of certiorari is timely filed within ninety days of the order of the Supreme Court of California on March 16, 1995. Appendix A.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment XIV: "No State shall .... deprive any person of life,

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1 The order is signed by an unidentified Acting Chief Justice.

liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Constitution

Article 6, section 1: "The judicial power of the State is vested in the California Supreme Court, the Courts of Appeal, the Superior Courts, and the Municipal Courts. All courts are courts of record"

Article 6, section 9: "The State Bar of California is a public corporation...."

State Statutes:

The state statutes at issue are California Business and Professions Code sections 6079.1, 6079.5, 6086.5, 6086.10, and 6086.65(a), and 6140.7 They are set forth at Appendix B.

IV.

STATEMENT OF THE CASE

Petitioner entered into a stipulation with an employee of the State Bar concerning an attorney disciplinary matter prior to the issuance of a Notice of charges on November 16, 1994. Said stipulation provides that, "The parties agree that stipulations as

to proposed discipline involving suspension, are not binding on the Supreme Court of California.... The Supreme Court must enter an order effectuating the terms and conditions of this stipulation before any stipulation for suspension, actual or stayed, will be effective." Appendix D-15, Stip, p. 4, Effect of this Stipulation, item 4. It provides, "the agreed disposition is eligible for costs to be awarded to the State Bar. (Bus. & Prof. Code s. 6086.10 and 6140.7). Petitioner has been notified of his or her duty to pay costs. The amount of costs assessed by the Office of Trial Counsel will be disclosed in a separate cost certificate submitted following approval of this stipulation by a hearing judge. The amount of costs assessed by the State Bar Court will be disclosed in a separate cost certificate submitted upon finalization of this matter." Appendix D-17, Stip, Pg.4, item H1.

The Petitioner notified the State Bar of her withdrawal of consent to the stipulation on December 2, 1994, and with the California Supreme Court on December 1, 1994. Appendix D-6. The State Bar on November 16, 1994 sent a transmittal of its recommendation for approval of the stipulation to the California

Supreme Court. It sent a prepared order for its signature. It attached a claim of "costs" of $1,556.00. There were no out-of pocket costs listed. It claimed costs of $1,083.00 for the Office of Investigation and the Office of Trials of the State Bar of California. Of the $1,083.00, the Office of Trials assessed $309.00 for itself. The Office of Investigations of the State Bar assessed $774.00 for itself. It attached a claim for $473.00 for the Office of the State Bar Court of the State Bar of California. It also had no out-of-pocket costs. No itemization was provided of the $1,556.00 costs. Appendix D-7.

Based on Petitioner's discovery on or about November 25, 1995 that the State Bar of California collected its employee prosecutors, investigators, and "judges" salaries and benefits on a time-expended basis as claimed "costs" by securing guilty adjudications in attorney disciplinary proceedings which is not disclosed to an accused until after they stipulate or are found guilty and she discovered other undisclosed financial interests, Petitioner on January 27, 1995 filed with the California Supreme Court a Petition for Review and Application for a Stay based on

her withdrawal of consent to the stipulation prior to its approval by the California Supreme Court. Said Petition for Review and Application for a Stay is reproduced at the Appendix as D.

Petitioner filed a Motion for Recusal of the California Supreme Court's and requested it rule on the motion before hearing and determining the merits, so as to permit the Petitioner access to the federal court concerning the bias issue. Said motion is reproduced at the Appendix at C.

On March 27, 1995 the California Supreme Court summarily denied the petition for a writ of review, application for stay, motion for recusal and ordered the stipulation entered as an order and ordered costs awarded to the State Bar. Appendix A.

V.

REASONS FOR GRANTING THE WRIT

A. The Absence of Judicial Recusal Remedies Concerning a State Supreme Court Poses Due Process Problems

The Motion for Recusal of the California Supreme Court Justices poses the problem that their approval of the stipulation, while consent had been withdrawn, would financially benefit the

employer of its appointees to the State Bar and recoup the salary and benefits of its appointees to a party on a time-expended basis. Appendix D.[2] The $473.00 for the State Bar Court judge recoups its appointee's private salary and benefits in approving the stipulation. The $309.00 recoups the salary and benefits of its appointee's co-employee private prosecutor, and the $774.00 recoups the private salary and benefits of its appointees' co-employer investigator. By finding cause for a violation of the probation terms in said stipulation, a minimum of $4,470 in additional salaries and benefits for the employer of its appointees to a party from each additional taking of the Petitioner's license

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2 The State Bar of California's employees are the prosecutors against accuseds. In 1989 the California Supreme Court appointed nine employees to the State Bar of California. In 1993 it appointed a tenth employee. They sit as judges to the State Bar's private State Bar Court. They require over a million dollars a year for their collective private salaries and benefits. By the State Bar and its judges having accuseds stipulate to dispositions and costs, they then impose their salaries and benefits as the claimed "costs" without prior disclosure to an accused, and for each probation violation proceeding, they impose a minimum of an additional $4,470 in salaries and benefits for themselves. By disbarring and suspending the State's attorneys, the State Supreme Court obtains monies for the employer of its appointees to the State Bar party. Appendices C,D.

to practice law would thereby be obtained. Over fourteen million dollars for the private employer of its appointees has been obtained from 3,091 license takings in less than four and half years.

The lack of statutes, rules, or constitutional provisions permitting recusal of a State Supreme Court judge in the California system poses the problem that a party has no procedural remedy to assure a fair and impartial adjudicator within its State Supreme Court.

B. A State Supreme Court which is a Partisan for a Prosecuting Party poses Dangers concerning the Licensing of a State's Attorneys

Based on this Court's statement that the test is whether the situation offers a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clean, and true between the State and the accused, **Aetna Life Insurance Company v. La Voie** 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988), is not a situation where a State Supreme Court appoints employees to a prosecuting party, which is

privately financed, and where by denying all issues of all accuseds, including withdrawal of consent to a stipulation, it orders monies paid as "costs" to reimburse the party for the salaries and benefits of not only its appointees to a party, but for their co-employees as well, such a situation of temptation to not hold the balance nice, clean, and true, that recusal of the California State Supreme Court Justices was and is required?

C. A Court signing a Stipulation to which consent has been withdrawn prior to its approval involves Due Process violations

Pursuant to **Carnegie Steel Company v. Cambria Iron Company** 185 U.S. 403, 46 L. Ed. 968, 22 S. Ct. 698 (1902), "a stipulation of counsel entered into for the purpose of saving time may be repudiated where the facts subsequently developed show that with respect to a particular matter, it was inadvertently signed, provided that notice be given in sufficient time to prevent prejudice to the opposite party." The Circuit Courts have generally adopted a "manifest injustice" standard by which a party is permitted, after court approval, to withdraw consent to a stipulation. **Logan Lumber Co. v. Commissioner of Int.**

Revenue 365 F. 2d. 846, p. 855 (Fifth Cir. 1966), **United States v. Tacoma** 330 F. 2d. 153 (Ninth Cir. 1964). There are no cases concerning withdrawal of consent to a stipulation before it has been submitted and approved by a court. It appears that the supervisory power of the Court will not attempt to enforce a stipulation when a party has withdrawn consent to it prior to its submission for approval to a court. If a party withdraws consent, it would appear there is no stipulation upon which the court may act. It would appear this issue of due process of law must be resolved by this Court, since other courts may also be enforcing and ordering stipulations entered when consent has been withdrawn by a party prior to a Court's approval.

May a Court, consistent with the due process right to "an opportunity to be heard at a meaningful time and in a meaningful manner," **Mathews v. Eldridge** 424 U.S. 319, 333, 85 S. Ct. 893, 902, 47 L. Ed. 2d. 18 (1976) (quoting **Armstrong v. Manzo** 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d. 62 (1965), approve a stipulation to which consent has been withdrawn prior to its submission for approval to the court, when

the stipulation's provisions state that the California Supreme Court must enter an order effectuating the terms and conditions of the stipulation before it is effective?

D. Stipulations for Attorney Discipline based on Undisclosed Conflicts of Interest within prosecutors and judges should be voided for lack of an informed consent

The stipulation's claim that the Respondent has been advised of her obligation to pay costs to be disclosed later would not have placed an ordinary person on notice that the prosecutor, his co-employee investigator, and what the Petitioner learned later, their mutual co-employee judge of the State Bar's State Bar Court, would be demanding the Petitioner pay their salaries and benefits. The purpose of entering a stipulation before charges are filed is to have no costs or expenses incurred and no liability for the same. Had the State Bar or its judges advised the Petitioner that the price of entering the stipulation was to pay their salaries and benefits and that for any further proceedings concerning revocation of probation under it, the judge would like his and his co-employee prosecutors and investigators' salaries and benefits paid by the Petitioner by his finding a violation and

taking the Petitioner's license, the Petitioner would have been forewarned not to sign the stipulation as this is a private, for profit operation the State Bar is running instead of a proper attorney licensing system. Appendix D-7, D-10, D-21.

The stipulation did not disclose the State Bar Court is not a Court and its judge approving and overseeing it is selected and employed by the prosecuting party from its private funds. It states that,"The parties agree that the State Bar Court has jurisdiction over Respondent to take the action agreed upon within this stipulation." Appendix D-15, Stip.,p. 3, B. There is no disclosure that the State Bar Court is not a Court, but a private program created and run by the State Bar's employees. There is no disclosure that its judges are selected and paid by the State Bar as their employees. There is no disclosure that this entity has no rules of a court or of an administrative entity. The prosecuting party writes its rules. For example, hearings are barred. Appendix D-15, D-16.

The Petitioner identified forty eight items of lack of disclosure by the State Bar and its judges concerning their various

conflicts of interest and the monies they want for various schools, programs, examinations the stipulation would have forced the Petitioner to pay for which were never disclosed in it or by them to the Petitioner. Appendix D-18- D-20, Reply Brief, p. 3-10.

As stated by this Court in **In re Ruffalo** 390 U.S. 544, 88 S. Ct. 1222, 20 L.Ed.2d. 117 (1968), at p. 551, in reference to attorney disciplinary proceedings, "These are adversary proceedings of a quasi-criminal nature. Cf. **In re Gault,** 387 U.S. 1, 33." The issue is whether due process requires that the stipulation be voided for lack of an informed consent under the reasoning of this Court that "... The relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must be made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." **Moran v. Burbine** 475 U.S. 412, 421 106 S. Ct. 1135, 1141, 89 L. Ed.2d. 410 (1986), **Kercheval v. United States** 274 U.S. 220,223, 47 S. Ct. 582, 583, 71 L. Ed. 1009 (1927). It did not reflect "the

unfettered choice of the defendant." **Boykin v. Alabama** 395 U.S. 238, 242-244, 89 S. Ct. 1709, 1711-1713, 23 L. Ed.2d. 274 (1969). It was not made voluntarily, knowingly, and intelligently with full understanding and appreciation of the consequences. **Machibroda v. United States** 368 U.S. 487, 493, 182 S. Ct. 510, 513, 7 L.Ed.2d. 473 (1962).

E. When a Party has changed the Law relied on, a Stipulation based on the Remedies relied on should be voided

Pursuant to **Logan, supra**, p. 855, "Where a stipulation is entered into under mistake of law induced by the then existing state of the case law, a taxpayer is entitled to be relieved of the effect of the stipulation if no prejudice results." When the stipulation was signed on November 16, 1994, the State Bar's rules permitted a party to move to have costs reduced, waived, or modified. Transitional Rules of Procedure of the State Bar, Rule 462, in effect 1989-January 1,1995. Reply Brief, p.15-16.

Effective January 1, 1995, the State Bar revoked the provision. It passed a rule barring an accused questioning their salaries and benefits being imposed as costs and the amount it awarded itself. Rule 282 of the Rule of Procedures of the State

Bar of California, effective January 1, 1995 states, "A respondent may challenge the propriety under Business and Professions Code section 6086.10(b) of the inclusion of items in the certificates of costs, and/ or may challenge the computation of properly included costs, **provided, however, that this rule does not authorize a challenge to the State Bar's determination of `reasonable costs' under Business and Professions Code section 6086.10(b)(3).**" (emphasis added). Reply Brief, p. 15.

Since the law relied on in existence on November 16, 1994 was revoked by the other party to the stipulation January 1, 1995 before it transmitted its recommendation for the California Supreme Court on January 11, 1995 for it to approve the stipulation to which the petitioner had withdrawn her consent on December 8, 1994, the stipulation should be voided as the remedy in existence to question the costs was revoked after the fact, and by the private party who is the financial beneficiary of its own rules barring all remedy for all accuseds within its private, partisan, and financially interested "Court." Reply Brief, p. 15.

CONCLUSION

A state system of attorney licensing that operates on layers of undisclosed private partisan and financial interests within private prosecutors, investigators, and judges does not provide confidence to the Public that lawyers are properly licensed.

The Petition should be entertained to address issues concerning due process requirements concerning fair and impartial adjudicators within a State Supreme Court, remedies to assure the same, entry of stipulated orders when consent has been withdrawn, and whether a stipulation should be voided for lack of an informed consent and when the law relied on was changed by the other party after the stipulation was executed but before it was approved.

RESPECTFULLY SUBMITTED,

Dated: April 4, 1995

EVANGELIN MARIE MILLER
Petitioner Attorney *Pro Se*

Verification

I have read the foregoing Petition for Writ of Certiroari to the Supreme Court of the State of California and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 5th day of April, at Sacramento, California.

RESPECTFULLY SUBMITTED,

Dated: April 5, 1995

EVANGELIN MARIE MILLER
Petitioner Attorney *Pro Se*

Supreme Court, U.S.
FILED

941655 APR 10 1995

OFFICE OF THE CLERK

No.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

EVANGELIN MARIE MILLER

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

EVANGELIN MARIE MILLER
2255 Watt Avenue, Suite 110
Sacramento, Ca. 95825

1-916-483-3801

Petitioner Attorney *Pro Se*

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B. State Statutes

C. Motion for Recusal of Members of California Supreme Court, filed February 27, 1995, California Supreme Court

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S043344

SBC 91-0-08839

IN THE SUPREME COURT OF CALIFORNIA

FILED
SUPREME COURT
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MAR I 6 1995
Robert Wandruff Clerk
P. QUINN, DEPUTY

IN RE EVANGELIN MARIE MILLER ON DISCIPLINE

Petition for writ of review, application for stay, and motion for recusal are denied.

It is ordered that Evangelin Marie Miller be suspended from the practice of law for two years, that execution of suspension be stayed, and that she be placed on probation for two years subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Regarding Stipulation filed September 29, 1994. It Is further ordered that she take and pass the California Professional Responsibility Examination within one year after the effective

date of this order. (See Segretti v. State Bar (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar and shall be added to and become part of the membership fee for the next calendar year. (Business and Professions Code section 6140.7.)

(unreadable)

Acting Chief Justice

State Statutes

THE STATE BAR ACT

California Business and Professions Code

Sec. 6001. STATE BAR; PERPETUAL SUCCESSION; SEAL; REVENUE; POWERS; LAWS APPLICABLE

The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.. . .No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with section 11000), Division 4 (commencing with section 16100), and Part 1(commencing with section 18000) and Part 2 (commencing with section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the legislature expressly so declares. (Origin: State Bar Act, sec. 2. added by Stats. 1939, ch 34. Amended by Stats. 1957, ch. 1526; Stats. 978, ch. 380; Stats. 1988, ch. 1149.)

Sec. 6079.1 STATE BAR COURT HEARING JUDGES

(a) The Supreme Court shall appoint a presiding judge of the State Bar Court and no fewer than seven hearing judges, and any additional hearing judges as may be authorized by the Legislature, to efficiently decide any and all regulatory matters pending before the Hearing Department of the State Bar Court. . .

(c) The board shall screen and rate all applicants for appointment or reappointment as a State Bar Court judge, and submit its nominations to the Supreme Court, unless otherwise directed by the Supreme Court. . .

(d) For judges appointed pursuant to this section or Section 6086.65, the board shall fix and pay reasonable compensation and

expenses and provide adequate supporting staff and facilities.

Sec. 6079.5 CHIEF TRIAL COUNSEL; APPOINTMENT; TERM; QUALIFICATIONS

(a) The board shall appoint a lawyer admitted to practice in California to serve as chief trial counsel. . .

Sec. 6086.5 STATE BAR COURT; ESTABLISHMENT; POWERS; RULES

The board of governors shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of section 6007 to the extent provided by rules adopted by the board of governors pursuant to this chapter.

. .

Sec. 6086.10 PAYMENT OF COSTS OF DISCIPLINARY PROCEEDINGS

(a) Any order imposing a public reproval on a member of the State Bar shall include a direction that the member shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the member shall pay costs.

(b) The costs required to be imposed pursuant to this section include all of the following:

(1) The actual expense incurred by the State bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.

(2) All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.

(3) The charges determined by the State Bar to be "reasonable costs" of investigation, hearing, and review. These

amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceedings and in the administration of the client security fund.

. . .

(d) In the event an attorney is exonerated of all charges following a formal hearing, he or she is entitled to reimbursement from the State bar in the amount determined by the State bar to be the reasonable expenses, other than fees for attorneys or experts , of preparation for the hearing. (Added by Stats. 1986, ch. 662.)

Section 6140.7 DISCIPLINARY COSTS ADDED to MEMBERSHIP FEE

Costs assessed against a publicly reproved or suspended member shall be added to and become a part of the membership fee of the member, for the next calendar year. Costs unpaid by a member who resigns with disciplinary charges pending or by a member who is suspended of disbarred shall be paid as a condition of reinstatement of membership.

EVANGELIN MARIE MILLER
2255 Watt Avenue, Suite 110
Sacramento, Ca. 95825

1-916-483-3801

Petitioner Attorney *Pro Se*

CALIFORNIA SUPREME COURT
FILED
FEB. 24, 1995
ROBERT WANDRUFF
CLERK DEPUTY

THE SUPREME COURT OF THE STATE OF CALIFORNIA

	Docket No. S043344
In the Matter of	State Bar Court Case No. 91-0-08839-AKG
EVANGELIN MARIE MILLER	**Motion for Recusal of Members of California Supreme Court**
No. 48332 A Member of the State Bar	

Now comes the Petitioner, Evangelin Marie Miller, and respectfully moves for this Court, and its members, to recuse itself from hearing and determining whether it should sign a proposed stipulated order recommended by this Court's appointee to a party when the other party, the Petitioner, has

withdrawn her consent thereto prior to this Court's approval , due to undisclosed conflicts of interest within this Court, the prosecutor, its judges, and its State Bar Court.

Petitioner requests this Court forbear affixing its signature to such proposed stipulated order and issue a ruling first on this motion for recusal, so as to provide the Petitioner with a minimum thereafter of two weeks to request, if this Court declines to recuse itself or assign a Court of Appeals, a federal court hear and determine whether this Court's affixing its signature to such a proposed stipulation as an order offends the principles of due process of law concerning a fair and impartial adjudicator.

This motion is based on this Motion, the attached Points and Authorities, the files, and the records, and judicial notice of the State Bar Court statutes and Rules of Court.

RESPECTFULLY SUBMITTED

Dated:February 23, 1995

EVANGELIN MARIE MILLER
Petitioner Attorney *Pro Se*

EVANGELIN MARIE MILLER
2255 Watt Avenue, Suite 110
Sacramento, Ca. 95825

1-916-483-3801

Petitioner Attorney *Pro Se*

THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of	Docket No. S043344 State Bar Court Case No. 91-0-08839-AKG
EVANGELIN MARIE MILLER No. 48332 A Member of the State Bar	**Points and Authorities in Support of Motion for Recusal of Members of California Supreme Court**

I.

Facts

The issue presented is whether this Court, or its members, should or may affix its signature to a proposed order

recommended by its appointee to the prosecuting party, based on a stipulation to which consent was withdrawn upon discovery by the Petitioner of a number of conflicts of interest of this Court, its appointees, the prosecutor, and the State Bar Court created by this Court with the prosecuting party.

References to "section(s)" refers to sections of the California Business and Professions Code. References to the "State Bar" refers to the State Bar of California. Petitioner incorporates by reference, as if set forth herein in full, the grounds of recusal which are set forth in her Petition appearing at pages 1-5.

II. The Risk of Bias is Intolerably High when a Court is a Partisan for a Party

When the risk of unfairness is intolerably high, a judge must be recused from a case. **Withrow v. Larkin** 421 U.S. at 58, 95 S. Ct. at 1470. While a judge is obligated to be unswayed by partisan interests, when he occupies a role as a partisan for a party and/ or on the issues presented by a party, he is disqualified to sit on a case as the risk of bias is intolerably high. California and American Bar Association Judicial Codes of Conduct, Canon

3(A)(1), Canons 3C(1)(a), (1)(c), 3C(3)(c). A judge who is an active participant in the affairs of a party possesses a"financial interest," as defined by the California and American Bar Association Judicial Codes of Conduct, Canon 3 C(3)(c) while Canon 3C(1)(c) requires a judge to disqualify himself when "he has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding."

A. Active Participation in the Affairs of the Prosecuting Party disqualifies the California Supreme Court and its members

Pursuant to **Ward v. Village of Monroeville** 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d. 267 (1972), "the court dealt with the issue of whether trial before a mayor who also had executive responsibilities for the village budget and finances was consistent with the guarantees of the due process clause when the revenue produced from the mayor's court provided a substantial portion of village funds. The court once noted that in **Tumey [v. Ohio** 273 U.S. at 532, 47 S. Ct. at 444] the fact that the mayor.... shared directly in the fees and costs did not define the limits of

the principle." 409 U.S.. at 60, 93 S. Ct. at 83. Rather the court reiterated, 'the test is whether the mayor's situation is one which 'would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clean, and true between the State and the accused....Id, quoting **Tumey v. Ohio, supra,** 273 U.S. at 532, 47 S. Ct. at 444. The court held that such 'possible temptation might exist, even in the absence of a direct, personal pecuniary interest on the part of the adjudicator, when his 'executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court.' 409 U.S. at 60, 93 S. Ct. at 83, as presented in **Matter of Ross,** 656 P. 2d. 832, 99 Nev.1 (Nev. 1983).

An executive role concerning maintaining monies coming in from guilty adjudications does not define the principle, as the Codes of Judicial Conduct recognize. Active participation in the affairs of a party is a financial interest in a party. California and American Bar Association Judicial Codes of Conduct, Canon

3(A)(1), Canons 3C(1)(a), (1)(c), 3C(3)(c). This makes sense. A judge who actively participates in a party's affairs, in making a judgement for it, will be saving it monies or awarding it monies. In this Court's case, it awards the State Bar party monies by awarding costs to the State Bar, which are, in fact, the salaries and benefits of its appointees to the State Bar party and those of their co-employees, plus ordering probation terms which obligates the other party to pay for other programs administered by the party to which this Court has appointed employees, some of which this Court's appointees directly participate in, such as the Client Security Fund of the State Bar of California. Sections 6079.1, 6086.65, 6140.5, 6086.10(a)(b)(c).

As the Codes of Conduct emphasize, "financial interest" in a party is not limited to a judge putting money in his own pocket. It includes giving, granting, awarding judgments to a party with whom the judge actively participates, since it is assumed that every judgment carries with it a financial saving, cost, or aspect to the party in whose favor a judgment is awarded. That is not an incorrect assumption, since this Court's

orders denying all petitions of all accuseds always order monies paid to the State Bar party which include recoupment of the salaries and benefits of this Court's appointees to their privately financed State Bar employer. 3,091 attorneys have been summarily disbarred and suspended by this Court since January 1, 1989 with all orders ordering them to pay this Court's appointees' salaries and benefits as claimed "Costs," without disclosure this Court's award of "Costs" is not "costs," but the salaries and benefits of this Court's appointees to a party and their co-employees.

The United States Supreme Court in **Liljeberg v. Health Services Acquisition Corp.** 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d. 855(1988) held that a judge who was on the Board of a College, even though the College was not a party to the action, when the College was a financial beneficiary of the judgement, was disqualified under the objective reasonable person test of recusal which applies to the disqualification of both state and federal judges. See **Aetna Life Insurance Co. v. La Voie** 475 U.S. 813, 89 L.Ed. 823, 106 S. Ct. 1580 (1986). Thus, even if

a financial beneficiary of a judgment is not a party, a judge is disqualified when he has an extrajudicial relationship with a financial beneficiary of its orders. The Judicial Codes have held that an active participant in the affairs of a party is similar to a Board member or director in requiring a judge's disqualification for direct involvement with a party. California and American Bar Association Judicial Codes of Conduct, Canon 3(A)(1), Canons 3C(1)(a), (1)(c), 3C(3)(c). **Liljeberg, supra**, makes clear that the involvement may be with a financial beneficiary of an order and is not limited to direct involvement with the parties.

Aetna, supra, makes clear that the state standard of recusal used by this Court and cited in **Lebbos v. State Bar of California** 53 Cal.3d. 37, 278 Cal. Rptr. 845, 806 P.2d. 317 (1991), footnote 1, as a rationale for its sitting on over 4,000 cases involving the State Bar, while it has appointed employees to it since 1989, has been overruled by a requirement that the California Supreme Court comply with an objective standard of recusal and not continue to use a subjective standard which permits each justice to determine his or her own bias . In **Aetna,**

supra, the United States Supreme Court made clear that a direct, personal, substantial pecuniary interest in a State Supreme Court Justice is not required for a State Supreme Court Justice to be required to recuse himself. As stated in **Aetna, supra**, at 822, "No judge `can be a judge in his own case [or be] permitted to try cases where he has an interest in the outcome." **In re: Murchison** 349 U.S. 133, 136 (1955).....what degree or kind of interest is sufficient to disqualify a judge from sitting 'cannot be defined with precision.' *Ibid.* None-the-less, a reasonable formulation of the issue is whether the `situation is one `which would offer a possible temptation to the average. judge to ... lead him not to hold the balance nice, clear and true.' **Ward v. Village of Monroeville**, supra, at 60. " "...Justice must satisfy the appearance of Justice." **Aetna, supra, p**. 825, quoting **In re: Murchison** 349 U.S. at 136.

The United States Supreme Court has stated that the process is to"examine what factors might constitute an interest in the outcome of this case that would bear on recusal. " **Aetna, supra**, p. 822. On information and belief, members of this Court

in 1988 met with officials and employees of the prosecuting party, the State Bar of California, without disclosure to any accuseds. On information and belief, members of this Court from 1988 through to the present have met with and had conversations with officials and employees of the prosecuting party, the State Bar of California, to which no accused has been privy and to which this Court has made no disclosure to any accused. Those meetings and conversations concerned a commitment by the members of this Court to aid and assist the State Bar prosecuting party in controlling and taking over attorney discipline from this Court so as to permit this Court to control its workload. No accused was ever apprised of any of these conversations, commitments, or *ex parte* collaborations by and between the members of this Court and a party. In 1988 and 1989, the members of this Court had *ex parte* communications with the State Bar party which it never disclosed to any accused. Those communications concerned requests from the prosecuting party for this Court to appoint employees to it to be "judges" to its State Bar Court to replace this Court issuing disbarment or

suspension orders on the state's attorneys. This Court, as recent publicity indicates, continues to have *ex parte* communications and conversations and meetings with the prosecuting party without any disclosure or notice to any accused. On information and belief, for over six years this Court has had *ex parte* communications with the prosecuting party concerning the merits of the constitutional issues presented by accuseds concerning the recusal of this Court and of the State Bar and its "judges" appointed by this court and concerning the unconstitutionality of the State Bar Court attorney licensing system.

As the federal court records indicate, which this Court has not disclosed to this Petitioner or any other accused, this court is a personal co-defendant with the prosecuting party in six federal lawsuits now pending concerning its removal from State Bar cases, which suits request personal monetary damages against the members of this Court for its claimed conspiracy with the State Bar private prosecuting party to disbar and suspend attorneys so as to financially benefit the employer of this Court's private appointees. Said suits plead, which is unrefuted in the

court records, that this Court has a prior involvement with the prosecuting party, has *ex parte* communications with that party, has an extrajudicial involvement with the prosecuting party in reviewing its nominees to be "Judges" to its State Bar Court and in interviewing, selecting, approving, swearing in appointees to the prosecuting party in 1989 and 1993 as well as overseeing them from 1989 through 1995, that this Court's appointees require over one million dollars a year for their private salaries as employees of the prosecuting party, and this Court has awarded its appointees' employer over fourteen million dollars in monies without disclosure to any of over 3,091 accuseds that the taking of the 3,091 attorneys' licenses would benefit the prosecuting party employer of this Court's appointees by over fourteen million dollars from the takings of accuseds' licenses to practice law. Hirsh v. Justices et. al, docket no. 94 55240, Server v. Justices et. al, docket no. 94 55250, Perry v. Justices et. al., docket no. 94 55507, Espinoza v. Justices et. al, docket no. 94 56335, Gupton v. Justices of the California Supreme Court, Eastern District Federal Court, Case no. 94-1495 GEB JM, and Grunwald v.

Justices of the United States Supreme Court, United States Supreme Court, filed February 14, 1994, docket no. pending.

Since this Court superseded the state statute permitting access to accuseds to the State Court of Appeals concerning cases concerning the State Bar party in 1990 by passing rules of court, which were recommended *ex parte* by the prosecuting to this Court and which were prohibited public comment, which rules prohibit access to any other court and reserve access to this Court alone, when it appointed employees to the State Bar prosecuting party in 1989, and, this permits this Court to review its appointees' recommendations against each accused and awards its appointees' monies from the takings of each accused's license to practice law, this act alone appears to confirm that a private conspiracy with the prosecuting party to disbar and suspend the State's attorneys to obtain monies for the employer of its appointees is a plausible explanation for the decisions of this Court for five years taking all accused's licenses to practice law. These facts raise a sufficient doubt in the mind of the average person on the street as to whether this Court could be impartial

concerning an accused's case to compel this Court's recusal for cause. Section 6082, California Rules of Court, Rules 950-962.

That this court changed, at the *ex parte* request of the State Bar and without allowing public comment, from *de novo* review of recommendations of the State Bar to no review permitted to an accused in this Court's discretion, which discretion it has exercised against over 3,091 accused attorneys since it appointed employees to the State Bar in 1989, is an additional indicia to the average person on the street that this Court is a biased adjudicator for the prosecuting party. Ca. Rules of Court, Rules 952, 954.

Appointing employees to a prosecuting party to be its Judges from a list exclusively provided by a prosecuting party is an additional indicia of bias for the prosecuting party which is unmistakable and which act was declared unconstitutional in a similar fact situation in **Wall v. American Optometric Association** 379 F. Supp. 175, affirmed 95 S. Ct. 166 (N.D. Ga. 1974), in which the United States Supreme Court denied certiorari.

Dealing with the specifics of the Petitioner's case, the State Bar in its reply has admitted it did not disclose the relevant facts about its financial interest, its State Bar Court, its judges, its money demands, its biased examinations, tests, and school, and the role of this Court for it and in providing it money from the Petitioner for this Court's appointees by this Court taking licenses. Response brief, hereinafter referred to as RB. These admissions of non-disclosure are sufficient. The State Bar admits an accused may never file to set aside a stipulation within fifteen days as provided in its rules, as the State Bar never discloses until several months later that it is demanding its' prosecutors, investigators, and co-employee judges' salaries and benefits be paid as claimed "costs," when there are no costs. The admitted non-disclosure tolls the period to object. Refer attached brief on the merits.

The Petitioner objected as soon as she had the first slight disclosure that something was not right with the representations made by the State Bar when she received a cost demand for $1,556.00 where there were absolutely no costs to the

proceeding as a Notitce to Show Cause had not even issued when the stipulation was forced upon the Petititioner by the State Bar employees informally without disclosure of the truth. Not one cent of money was spent on this proceeding, so $1,556.00 had to not be "costs" as represented in the stipulation.

Since this Court would be awarding $1,517.00 for the employer of its appointees, of which $473.00 is recoupment of the salary and benefits of its appointee to the prosecuting party for her salary and benefits in taking two minutes to put her name on a piece of paper, this Court, by sitting on this case, would be benefiting its own appointee to a party, just as it would be doing so if the monies went to the private employer of the wives or husbands of the members of this Court if it entered such an order without disclosure and waiver of its interest in the outcome.

III. The Risk of Bias is Intolerably High when a Court is a Partisan on the Issues

While a State Supreme Court Justice had on-going litigation with an insurance company, which was not a party to the judgment, the judgment involved application of a new issue concerning bad faith insurance practices, which "had the clear and

immediate effect of enhancing both the legal status and the settlement value of his own case." This compelled the United States Supreme Court to void the judgment and order of the State Supreme Court. **Aetna, supra**, p. 824. When a judge sat as a one-man Grand jury and then sat on whether he would enforce his orders by way of contempt, he was disqualified as a partisan on his own issues. He wore two hats at the same time- one partisan and one adjudicative. **In re: Murchison, supra.** This Court created a State Bar Court with a private party. It did so by appointing its judges. It occupies an executive role for a party. It appoints, reappoints, removes, and oversees its appointee Judges to a party's claimed Court. Now the issue is whether this claimed Court is non-existent as an unconstitutional court, and whether non-disclosure to the Petitioner that this claimed Court is not a Court, but a private group of employees of a prosecuting party is presented as to whether such non-disclosure warrants, among other factors, withdrawal of the Petitioner's consent to a stipulation entered by it and non-approval of a recommended order premised exclusively on such

consent and non-disclosure. Since this Court is, similar to the Board in **Gibson v. Berryhill** 411 U.S. 564, 579, 93 S. Ct. 1689, 36 L. Ed. 2d. 488 (1973), one of the Commissioners on a Board in **Yamaha Motor Corp., U.S.A. v. Riney** 21 F.3d 793 (Eighth Cir. 1994), and the entire Commission in **United Church Etc. v. Medical Center Com'n** 689 F. 2d. 693 (Seventh Cir. 1982), a partisan about the issue of a State Bar Court and the underlying issues of the Petitioner's petition, it is disqualified to hear or entertain the Petitioner's cause.

CONCLUSION

Since this court has had an opportunity to recuse itself in this situation for over five years, and has summarily denied all petitions of accuseds and, on information and belief, has refused to rule on about five hundred recusal motions [1] raising these

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[1] On information and belief, this Petitioner is informed that the following attorneys have requested recusal of this Court on the identical grounds, and this Court has summarily denied each Petition: Lebbos, supra, Attorneys Barry Ammon, Harold Rauch, John Rakus, Robert Philip McNamee, Ronald Berki, Raymond Dunn, Gary Coutin, John B. Gunn, G.G. Baumen, Kevin G. Gupton, Lucille Boston, Richard Travis, Stuart Hirsh, Harold Perry, Howard Johnson, Lawrence Bragg, Edmuno Espinoza.

identical issues presented by accuseds, since the Petitioner's case does not involve approving guilt, but this Court's duty to forbear signing a recommended stipulated order when consent was withdrawn as soon as the Petitioner had notice of the first irregularity in the State Bar's representations and it is admitted by the State Bar that the Petitioner's consent to the stipulation was obtained through its admitted fraud and/ or non-disclosure, Petitioner requests that this Court issue a ruling on its recusal first so as to permit the Petitioner access to the federal court to hear and determine whether this Court should be permitted to review whether it may sign a proposed order concerning its interests in the prosecuting party or whether by reason of conflict of interest, this Court is foreclosed from such consideration and must forbear from signing such a proposed order for its appointee to the prosecuting party.

RESPECTFULLY SUBMITTED,

Dated: February 24 ,1995

EVANGELIN MARIE MILLER
Petitioner Attorney *Pro Se*

Verification

I have read the foregoing Points and Authorities in support of Motion for Recusal of members of the California Supreme Court and state it is made on my own personal knowledge, information, and belief, and this verification is executed this 24th day of February at San Jose, California.

_____

EVANGELINMARIEMILLER
Petitioner Attorney *Pro Se*

SUPREME COURT
FILED
JAN 27 1995
Robert Wandruff
Clerk Deputy

THE SUPREME COURT OF THE STATE OF CALIFORNIA

	) Docket No. S043344
In the Matter of	) State Bar Court Case) No. 91-0-08839AKG
EVANGELIN MARIE MILLER	**Verified Petition For Review and Application for a Stay**
	Ca. Rules of Court, Rule 952(d)
No. 48332 A Member of the State Bar	

EVANGELIN MARIE MILLER
2255 Watt Avenue, Suite 110
Sacramento, Ca. 95825

1-916-483-3801

Respondent Attorney *Pro Se*

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THE SUPREME COURT OF THE STATE OF CALIFORNIA

	) Docket No. S043344
	)
In the Matter of	) State Bar Court Case No.
	) 91-0-08839-AKG
	)
EVANGELIN MARIE MILLER	) **Verified Petition for**
	) **Review and**
	) **Application For a**
	) **Stay**
	)
	) Ca. Rules of Court,
	) Rule 952(c)
	)
No. 48332	)
A Member of the State Bar	)
_____	)

The Petitioner, EVANGELIN MARIE MILLER, a registered voter and an attorney at law, petitions for review of an order approving stipulation of the parties signed by State Bar Court Judge Alan Goldhammer, an appointee of the members of this Court. Petitioner withdrew her consent to the stipulation by filing with the State Bar Court on December 2, 1994 and with this Court on December 1, 1994, after notifying both on December 1, 1994 of the withdrawal of the Petitioner's consent to said stipulation. Exhibit A-1, A-2, A-3. The Petitioner is not

in possession of said order of Judge Goldhammer although she was advised by Diane McHenry of this Court that the transmittal it received contained such an order approving stipulation of the parties. The transmittal sent to the Petitioner by mail November 16, 1994 from the State Bar did not contain such an order. Exhibit B. The Transmittal of State Bar Court Recommendation sent to the Petitioner by mail on November 16, 1994 contained solely the two page Transmittal of Recommendation, Exhibits B-1 and B-2; Proposed Order on California Supreme Court caption approving stipulation which was unsigned, Exhibit B-3; Declaration of Service of Transmittal of Recommendation dated November 16, 1994 and Proposed Order, Exhibit B-4; Certificate of [State Bar] Costs of $1,556.00 filed January 11, 1995, Exhibit B-5; Certificate of Costs of $1,083.00 Submitted by the Office of Investigation and the Office of Trials of the State Bar of California, Exhibit B-6; Statement of Costs of $473.00 of Office of the State Bar Court of the State Bar of California, Exhibit B-7, and Declaration of Service of Certificate of Costs and Accompanying Costs filed on November 16, 1994, Exhibit B-

8. There was no order. Exhibit B-1 through Exhibit B-9.

Since the Petitioner could not file her Petition for Review of such an order in accordance with California Rules of Court Rule 952(d) within sixty days after notice of the order, since she was not provided notice of the order, Petitioner respectfully requests that her Application for Relief from Default be granted, and this Petition for Review requesting disallowance of the stipulation be granted by reason of the undisclosed conflicts of interest, including financial interest, within the signatory judge Goldhammer and his co-employee prosecutors and investigators, whereby the Petitioner, in entering into the stipulation, could not have provided and did not provide an informed consent. The chart of the 3,091 disbarments and suspensions and fourteen million dollar financial interest of the State Bar and its State Bar Court in procuring stipulated guilty dispositions is attached as Exhibit C, which information was never disclosed to the Petitioner.

A. Necessity of State Court Appellate Ruling

Pursuant to Article 3, section 3.5 of the California

Constitution, the State Bar Court of the State Bar of California admits it is constitutionally prohibited from deciding the constitutional issues presented. As stated by it *In the Matter of Res B* (Review Dept. 1991), 1 Cal. State Bar Reporter 424, "As a *sui generis* arm of the Supreme Court, the State Bar Court may recommend the Supreme Court declare a statute unconstitutional, but may only interpret existing law."

B. Important Questions of Constitutional Law

This Petition is filed pursuant to California Rules of Court, Rule 952(d) concerning review of decisions of the State Bar Court. This Petition is filed as the legal questions concern 1) whether a Petition for review is jurisdictional late when the notice of transmittal to the California Supreme Court sent to a party contains no order to be reviewed, 2) whether an order of an employee of a prosecuting party based on a stipulated disposition between the parties must not be approved by a constitutional court based on the withdrawal of consent by a party prior to approval, and 3) whether such withholding of approval is required by reason of the lack of an informed consent by a party

to the stipulation arising from lack of disclosure of a number of conflicts of interest of the judge and prosecutor approving the stipulation, including the nature and extent of his financial interest for her employer in securing it and the judge's status as an employee of the prosecuting party.

As the fiduciary in charge of its appointees to the prosecuting party, this Court has a duality of role which renders it difficult for it to sit impartially concerning non-approval of the stipulation and granting relief to the Petitioner. Ca. Rules of Court, Rule 961. The funds obtained from the Petitioner of initially the $1,556.00 demanded in the transmittal of November 16, 1994, Exhibits B-5, B-6, B-7, are available to be used by the prosecuting party to pay the salaries and benefits of this Court's appointees to the prosecuting party, including its appointee Judge Goldhammer. Further monies would be available by it permitting its appointees to find a revocation of probation and imposing additional monies to reimburse the salaries and benefits of its private appointees and to fund their law clerks, offices, research assistants, medical, dental, and retirement plans since

administrative costs to recoup reasonable expenses of investigation, hearing, and review are assessed and collected for this Court's appointees private employer for each additional proceeding. Ca. Business and Professions Code section 6086.10(b). Therefore, an important issue of law is whether, as a partisan for the prosecuting party and its State Bar Court, this Court is required to disqualify itself from passing on this Petition and, pursuant to Article 6, section 12 of the California Constitution, assign it for hearing to a State Court of Appeals.

1. A Partisan State Supreme Court and Request for Assignment to State Court of Appeals

The issue presented is whether the California Supreme Court is and has been unconstitutionally constituted since January 1, 1989 to sit on cases concerning the State Bar of California. Since this issue involves the extrajudicial and personal roles assumed by the members of this Court for a party appearing before them, and their possible personal liabilities to those harmed thereby, the Petitioner respectfully requests this Court recuse itself from deciding to review or reviewing the merits of this Petition and pursuant to the recusal criteria for State Supreme

Court Justices established by the United States Supreme Court in Aetna Life Insurance Company v. LaVoie 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1986), and pursuant to Article 6, section 12 of the California Constitution and Mosk v. Superior Court of Sacramento County 159 Cal. Rptr. 494, 601 P. 3d. 1030, 25 C.3d. 474 (1979), assign this Petition to a State Court of Appeals.

2. The Absence of Notice of the Order in the Transmittal of November 16, 1994 should extend the Jurisdictional Period to file for Review

Since the Petitioner could not file her Petition for Review of such an order in accordance with California Rules of Court Rule 952(d) within sixty days after notice of the order, since the transmittal she received with the November 16, 1994 Transmittal from the State Bar contained no order, but contained solely a transmittal of an unsigned proposed order for the California Supreme Court to sign with an indication in the two page transmittal letter that this was an original proceeding, that pursuant to section 6086.10 of the Business and Professions Code, statutorily authorized costs of this disciplinary proceeding

should be awarded to the State Bar of California, and that enclosed are the Certificate of Costs and Statement of Costs pursuant to rule 461, Rules of Procedure of the State Bar of California from ....., that the member's address is 3961 America River Drive, Sacramento, Ca. 95864, that certain information was provided to the member about rules, and that the other information to assist the Supreme Court is that this attorney has not had prior discipline imposed and that "we would like to bring to the Court's attention that Ms. Miller currently has no matters pending with the Supreme Court." Exhibits B-1- B-2. The transmittal contains no reference to an order approving any stipulation of the parties, and it does not enclose one either.

Since the transmittal sent to the Petitioner November 16, 1994 contained no order approving stipulation but just a request for the California Supreme Court to sign a proposed order, the Petitioner was not placed on notice that she had sixty days to file a Petition to prevent such a proposed order being signed, although the Petitioner took the precautionary step of writing this court asking it to withhold acting on her signature to a

stipulation, which letter was received by this Court on December 2, 1994. Exhibits A-1, A-2, Exhibit B. Since notice of the order approving stipulation was required before the sixty days could run to file a Petition for Review, this Court, or its assignee Court of Appeals' panel, should permit this filing as jurisdictionally proper, since the first notice the Petitioner received that an order approving stipulation had been signed and sent to the California Supreme Court was telephonic advice of the same on January 23, 1995 from Diane McHenry, Clerk of this Court. An order obtained without notice may be attacked at any time. Thompson v. Cook (1942) 20 Cal. 2d. 564, Nagel v. P & M Distributors Inc. (1969) 273 Cal. App. 2d. 176, 179-182, Sniadach v. Family Finance Corp. 395 U.S. 337 (1969), and Fuentes v. Shevin 407 U.S. 67 (1972).

3. Petitioner's Withdrawal of Consent prior to Approval by the State Supreme Court voids the recommended order

The Stipulation entered into between the Petitioner and the State Bar was entered into prior to the issuance of a Notice to Show Cause. Petitioner could not have known of the defects

in the State Bar Court system to which she was submitting herself by entering into such a stipulation with its employees as the principals within the State Bar failed to disclose the relevant facts to the Petitioner. The Stipulation face sheet states it is being submitted to The State Bar Court of the State Bar of California. Stip, Pg.1. It states it is being submitted for approval to the California Supreme Court following its approval by the State Bar Court, and that "The Supreme Court must enter an order effectuating the terms and conditions of this stipulation before any stipulation, actual or stayed, will be effective." Stip, p. 4, Effect of this Stipulation, item 4. These terms lead the signatory party to believe the State Bar Court is part of the constitutional courts within the State, since its transmits its proposed orders directly to the California Supreme Court for its approval. There is no disclosure that the State Bar Court is not a "Court." Article 6, sections 1, 9, Ca. Constitution. There is no disclosure that it is not publicly funded. California Business and Professions Code section 6140 et. seq. There is no disclosure that the State Bar Court is operated from funds, *inter alia*, obtained by finding

accuseds guilty. California Business and Professions Code section 6086.10. There is no disclosure the State Bar Court is a private entity created and run by the prosecuting party, the State Bar of California. There is no disclosure that it does not conform to the rules of evidence or of procedure applicable to the constitutional courts as its principal and owner, the State Bar, has exempted itself from State law under Ca. Business and Professions Code section 6001. There is no disclosure that the State Bar Court judges within this entity are the private co-employees of the prosecutors and their investigators. Ca. Business and Professions Code sections 6079.1, 6079.5, 6086.65. There is no disclosure that the two years of stayed suspension and of probation is supervised and determined, as well as its revocation by an employee of the prosecuting party who obtains money for his private employer by finding cause to revoke the probation of the signatory accused. Ca. Business and Professions Code sections 6079.1, 6079.5, 6086.5, 6086.65, 6086.10.

In a valid plea bargained disposition, all relevant facts and

consequences are required to be disclosed prior to its entry by the prosecutor and approval by a constitutional court. An accused must have "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Moran v. Burbine 475 U.S. 412, 421 106 S. Ct. 1135, 1141, 89 L. Ed.2d. 410 (1986). This must also apply to the State Bar Court system, as it also is a rule applicable to civil proceedings. The Stipulation states, "In order to accomplish the objectives of this stipulation, the parties waive all State Bar Court procedures regarding formal discovery as well as hearing or trial." Stip, pg. 4, D. It then states, "the agreed disposition is eligible for costs to be awarded to the State Bar. (Bus. & Prof. Code s. 6086.10 and 6140.7). Respondent has been notified of his or her duty to pay costs. The amount of costs assessed by the Office of Trial Counsel will be disclosed in a separate cost certificate submitted following approval of this stipulation by a hearing judge [of the State Bar Court]. The amount of costs assessed by the State Bar Court will be disclosed in a separate cost certificate submitted upon finalization of this matter." Stip, Pg.4, item H1.

The stipulation contains no disclosure of the amount of money required to be paid. It contains no disclosure that "costs" are not statutory costs, but the salaries and benefits of the State Bar employee investigators, prosecutors, and co-employee judges within its State Bar Court. It contains no disclosure of when the monies are to be paid. It contains no disclosure of any conditions to be attached to said payments of unidentified monies. The stipulation further states,"Waiver of Right to Petition for relief from Assessed Costs," Stip, Pg. 7, that "Respondent acknowledges that this Stipulation is a compromise of disputed allegations and that a petition for relief from costs pursuant to Transitional Rules of Procedure, rule 462, alleging special circumstances or other good cause shall not be based upon the timing of this Stipulation, any aspects of the negotiation process in this case, nor the degree of discipline agreed upon by the parties hereto." It further states that, "That within one (1) year from the date on which the disciplinary order in this matter becomes effective, Respondent shall attend the State Bar Ethics School, which is held periodically at the State Bar of California...

and shall take and pass the test given at the end of such session." Stip, p. 28, Attachment to Stipulation. There is no disclosure there is a fee required for said school. There is no disclosure that the fee is $100.00, and that the sums to be paid for it are paid to the prosecuting party, or that the examination given at the end of it is prepared, graded, and approved solely by the prosecuting party.

The stipulation further provides that,"It is further recommended that the California Supreme Court order Respondent to take and pass the California Professional Responsibility Examination administered by the Committee of Bar Examiners of the State Bar of California within one year of the effective date of the order of the Supreme Court..." Stip., p.22, Further Recommendations. There is no disclosure that this examination is prepared, written, and graded by the prosecuting party. There is no disclosure the costs of said examination is $250.00. There is no disclosure those funds go to the prosecuting party. There is no disclosure the examination is a trick examination of a subjective nature requiring not a correct

answer, but the "best" answer. There is no disclosure that there is a less than a thirty percent pass rate for said examination, and that each time it is required to be taken costs the attorney an additional $350.00 payable to the prosecuting party, and that failure of such examination is grounds for revocation of probation and imposition of a two year actual suspension. There is no disclosure that the two year actual suspension may be imposed *ex parte*, without notice or hearing afforded to the Petitioner. Ca. Rules of Court, Rule 951(b). There is no disclosure that such an *ex parte* two years actual suspension may be imposed by an employee of the prosecuting party, sitting as a Judge in the State Bar Court, wherein he awards himself, his co-employee prosecutor and investigator additional monies for their salaries and benefits by revoking the stay and imposing an actual suspension. Ca. Business and Professions Code section 6086.10.

Until a few days after November 16, 1994, after the stipulation was signed and approved by the State Bar Court prior thereto, the Petitioner was never advised the State Bar Court judge was demanding he be paid $473.00 by the Petitioner for

affixing his signature to the stipulation, or that the prosecutor was demanding that he be paid $309.00 by the Petitioner for handwriting inserts into a form stipulation and signing it, and that their mutual co-employee investigator was demanding $774.00 from the Petitioner for investigating this case so as to ensure a guilty recommendation issue, when no guilt could reasonably be found on the facts, and that unless the Petitioner paid these private co-employees for their salaries and benefits of a total of $1,556.00, she would be *ex parte* suspended for two years by one of them. Exhibit B-6, B-7, B-8. It is in light of these non-disclosures of relevant conflicts of interest and financial interest of the principals, the Petitioner withdrew her consent to the stipulation on December 1, 1994. Exh. B-1. Since the basis of the recommendation is a stipulation, to which consent was revoked by a party after she learned the true facts after it was executed, this Court should not approve the recommendation, since the Petitioner withdrew consent to the stipulation prior to its approval by this Court. McDowell v. Orsini (1976) 54 Cal. App.3d. 951, 960, 127 Cal. Rptr. 285, Johnson v. Superior Court

121 Cal.3d. 115, 116, 175 C.R. 272, People v. Hill (1974) 12 C. 3d. 731, 767, 117 C.R. 393, 528 P.2d.1.

4. By Reason of the Lack of Informed Consent, the Stipulated Plea Should be Voided

There is no clause in the stipulation concerning the waiver of a constitutional right to a judicial proceeding or a disinterested judge or prosecutor. The United States Supreme Court has stated a guilty plea is more serious than a confession because it is tantamount to a conviction. Kercheval v. United States 274 U.S. 220,223, 47 S. Ct. 582, 583, 71 L. Ed. 1009 (1927). The United States Supreme Court has required that a guilty plea, like any surrender of fundamental constitutional rights, reflect the unfettered choice of the defendant. Boykin v. Alabama 395 U.S. 238, 242-244, 89 S. Ct. 1709, 1711-1713, 23 L. Ed.2d. 274 (1969). Courts have inquired as to whether the plea was made voluntarily, knowingly, and intelligently with full understanding and appreciation of the consequences. Machibroda v. United States 368 U.S. 487, 493, 182 S. Ct. 510, 513, 7 L. Ed.2d.. 473 (1962). The Courts must indulge in every reasonable presumption against waiver of constitutional rights. Evans v.

Raines 800 F. 2d. 884, 885 (Ninth Cir. 1986). Voluntariness, knowledge, and intelligent waiver means the capacity for reasoned choice among the alternatives available. Moran v. Godinez 972 F. 2d. 263 (Ninth Cir. 1992), at p. 266. "... The relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must be made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Moran v. Burbine 475 U.S. 412, 421 106 S. Ct. 1135, 1141, 89 L. Ed.2d. 410 (1986).

The totality of the circumstances is examined to determine if a knowing and intelligent relinquishment of rights has occurred. Johnson v. Zerbst 304 U.S.458,464, 58 S. Ct.1019, 1023, 82 L.E d. 1461 (1938). The standard of voluntariness of guilty pleas was adopted by the United States Supreme Court in Brady v. United States 397 U.S. 742, 753, 90 S. Ct. 1463, 1472, 25 L. Ed. 747 (1970) from Judge Tuttle of the Fifth Circuit, as follows:

> "A plea of guilty entered by one fully aware of the direct consequences, including the actual value of any

> commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes). 242 F. 2d. at page 115"

Misrepresentation or other impermissible conduct by state agents voids a guilty plea. Von Moltke v. Gillies 332 U.S. 708, 68 S. Ct. 316, 92 L. Ed. 309 (1948). The term "misrepresentation" means, "a false impression or account, the act of misrepresenting which is defined as "to give a false impression or account of, either deliberately or unintentionally." The New Lexicon Webster's Dictionary of the English Language, "misrepresentation" at p. 639. The State Bar and its co-employee State Bar Court Judge Goldhammer concede that they concealed that they are co-employees, that they have a financial interest for their private employer in securing the stipulation without disclosure of their relationship as co-employees and of the monies payable to their mutual employer, and that they are permitted to *ex parte* revoke probation and impose a two year actual suspension, while being partisans and financially interested

therein. These omissions strike at the core of the stipulation. The misrepresentations strike at the core of the stipulation as the Petitioner would not have entered into it had she known the" conditions" required large money payments to the State Bar, had she known the judge enforcing the stipulation and its conditions is the prosecutor's co-employee and financially interested in revoking the stayed suspension and imposing money awards for himself and his co-employee prosecutors, investigators, and judges, and his employer, and had the Petitioner been advised she would have no access to a neutral court of law by reason of the partisan role of the State Bar Court judges and the State Supreme Court for the prosecuting party. If an accused were told if he signs a paper for a guilty plea that he will not be permitted to have a neutral or a constitutional court of law review whether more punishment should be imposed for violation of its "conditions," and he will have to continue paying off the judge's private employer indefinitely and his co-employee prosecutors and investigators, no accused in his right mind would sign such a paper.

Since the waiver of constitutional rights was not knowing, intelligent, voluntary, but was based on the misrepresentation and omission of material facts by each layer involved, the stipulation must be voided as being the product of an uninformed consent. In all events, entry of the order approving stipulation must be voided for lack of disclosure by Judge Goldhammer of his relationship to the financial beneficiary of his order and the amount of financial interest therein under the reasoning of the United States Supreme Court in Liljeberg v. Health Services Acquisition Corp. (1988) 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d. 855.

5. The Court may not Enter an Award of Costs When There was no Prior Service on the Petitioner

The Stipulation which was approved by the State Bar Court judge by order approving stipulation did not contain a memorandum of costs. The Memorandum of Costs was not served until after November 16, 1994. Exhibit B. An order may not issue for costs when there was no service of a cost memorandum. Riddell v. Harrell (1886) 71 Cal. 254, 261;

Coast Electric Service, Inc. v. Jensen (1931) 111 Cal. App. 124, 388-389, c.f. Bell v. Superior Court (1906) 150 Cal. 31, 35-37. Since it was a substantial material omission of a known fact, the stipulation must be voided in its entirety for lack of consideration and of disclosure.

Petitioner incorporates by reference, as if set forth herein in full, the attached Declaration of Counsel concerning the unavailability of a transcript due to no hearing having been conducted within the State Bar Court. Ca. Rules of Court, Rule 952(e)(3).

Conclusion

By reason of the importance of determining whether a a Petition must be filed within sixty days when there is no service of an underlying order; whether a party"s consent must be permitted to be withdrawn prior to approval by a constitutional court; whether, in all events, the Petitioner's consent must be permitted to be withdrawn since it was an uninformed consent, so that this Court would be acting unconstitutionally in approving a stipulation based on an uninformed consent; and whether, by

reason of the lack of service of the Memorandum of Costs with the stipulation and order, this Court is without jurisdiction to award costs to the State Bar, Petitioner respectfully requests this Petition be referred to a Court of Appeals' panel to hear and determine these significant constitutional issues and that a Stay of proceedings within the State Bar Court and this Court issue until it has heard and determined the cause, and that this Honorable Court, in the interim, forebear from approving the proposed order.

I declare under penalty of perjury the above Petition is based on my own personal knowledge, information, and/or belief, and this verification is executed this 24th day of January, 1995 at Sacramento, California.

RESPECTFULLY SUBMITTED,

_____

EVANGELIN MARIE MILLER
Petitioner Attorney *Pro Se*

JESSIE SHIOW-JIUN HO
2255 Watt Avenue, Suite 110
Sacramento, Ca. 95825

1-916-483-3801

Petitioner Attorney *Pro Se*

THE SUPREME COURT OF THE STATE OF CALIFORNIA

In the Matter of	)	Docket No. S043344
	)	
	)	State Bar Court Case
	)	No. 91-0-08839-AKG
	)	
EVANGELIN MARIE MILLER	)	
	)	**Declaration of Counsel**
	)	**re: Unavailability**
	)	**of Transcript**
	)	
	)	Ca. Rules of Court, Rule
	)	952(d)
No. 48332	)	
A Member of the State Bar	)	
_____	)	

No hearing was conducted within the State Bar Court at any time. No Notice to Show Cause had issued. There was no hearing concerning whether the plea or waiver of rights was voluntary, intelligent, or informed prior to approval of the stipulated plea. As a result of the foregoing, there is no transcript

of a hearing.

I declare under penalty of perjury the above Declaration of Counsel is based on my own personal knowledge, information, and belief, and this verification is executed this 25th day of January, 1995 at San Jose, California

RESPECTFULLY SUBMITTED,

_____

EVANGELIN MARIE MILLER
Petitioner Attorney *Pro Se*

Supreme Court, U.S.
FILED
MAY 10 1995
CLERK

No. 94-1655

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1994

Evangelin Marie Miller, *Petitioner,*

v.

The State Bar of California, *Respondent.*

To Petition for Writ of Certiorari
to the Supreme Court of
the State of California

BRIEF FOR RESPONDENT IN OPPOSITION

DIANE C. YU
LAWRENCE C. YEE
RICHARD J. ZANASSI*
555 Franklin Street
San Francisco, California 94102
Telephone: (415) 561-8200

Attorneys for Respondent

*Counsel of Record

QUESTIONS PRESENTED

1. Was the California Supreme Court's determination that recusal was not appropriate in light of petitioner's highly speculative and conclusory allegations of bias a denial of Due Process?

2. Whether the California Supreme Court's order of discipline against an attorney based, in part, on a stipulation that was properly before the Court, raises an important federal question which should be decided by this Court?

3. Whether petitioner's vague and unsupported claims of financial interest on the part of State Bar Court judges and trial counsel raise an important federal question which should be decided by this Court?

4. Did the changes to the State Bar's Rules of Procedure, with respect to the procedure for seeking relief from or extensions of time in which to comply with Orders assessing costs imposed pursuant to Business and Professions Code section 6086.10, violate Plaintiff's right to due process?

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STATEMENT

Petitioner, Evangelin Marie Miller, ("petitioner") is an attorney who, pursuant to a Stipulation as to Facts and Disposition ("Stipulation"), entered in a State Bar of California ("the State Bar") disciplinary proceeding, was granted a period of stayed suspension from the practice of law conditioned upon her participation in a two year period of supervised probation by Order of the California Supreme Court. Petitioner seeks a writ of certiorari to review the California Supreme Court's Order, issued March 16, 1995, denying her motion for recusal, petition for review and application for a stay of the order of suspension.

Petitioner first argues that a writ of review should be granted because the California Supreme Court's recusal procedures, or lack thereof, "pose due process problems". (Petition, pp. 6-8.) Petitioner next

argues that, due to the "partisan" nature of the California Supreme Court, recusal of the California Supreme Court justices in this case was and is required. (Petition, pp. 8-9.) Petitioner alleges that her consent to the Stipulation was obtained without full disclosure by both State Bar trial counsel and the State Bar Court hearing judge, of the nature and extent of their financial interest in securing such Stipulation. (Petition, p. 11.) Petitioner contends that the Stipulation should be voided because she was not notified, in advance, of the amount of costs to be assessed in connection with her case. (Petition, pp. 11-14.) Petitioner alleges that she learned of the State Bar's "undisclosed financial interests" on or about November 25, 1995 and notified the California Supreme Court on December 1, 1994 of her withdrawal of consent to the Stipulation. (Petition, p. 5.) Petitioner contends that the Stipulation should not

have been approved by that Court. (Petition, pp. 9-11.)

As will be shown more fully below, petitioner's arguments with respect to the "partisan" nature of the California Supreme Court are groundless, and recusal was not appropriate in her case. Petitioner's contentions regarding the validity of the Stipulation are equally without merit as (1) petitioner was advised that she would be required to pay costs associated with the State Bar's prosecution of her case from the outset; (2) petitioners's attempt to withdraw her consent to the Stipulation was untimely, insufficient and legally ineffective; and (3) petitioner's allegations regarding the State Bar Court's and State Bar employees' undisclosed financial interest in the outcome of her case are frivolous, without any factual basis, and entirely without merit.

A. **Procedural History**

Petitioner was admitted to the practice of law in California on January 7, 1971. At all times herein mentioned, petitioner has been a member of the State Bar of California.

In August 1994, prior to and in lieu of the issuance of a Notice to Show Cause, petitioner, while represented by an attorney, affixed her signature to a Stipulation As To Facts and Disposition with the State Bar concerning allegations of misconduct against her. The Stipulation included an express waiver by petitioner of any rights of reconsideration and review under rules 952, 952.5 and 953 of the California Rules of Court. On September 26, 1994, in accordance with the provisions of former rules 405-407 of the

Transitional Rules of Procedure of the State Bar[1], the fully executed Stipulation was submitted to the State Bar Court for approval. On September 28, 1994 the State Bar Court hearing judge entered an Order approving the Stipulation and recommending the disposition to the California Supreme Court. In accordance with the Stipulation, the Order further approved an award of costs to the State Bar pursuant to Business and Professions Code section 6086.10. The proof of service attached to the Order indicates that it was served on petitioner, via her attorney, on September 29, 1994.

Petitioner did not attempt to withdraw or modify her consent to the Stipulation until December 1, 1994, after the matter had been transmitted to the

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[1]This is a reference to the rules which were in effect between September 1, 1989 and December 31, 1994.

California Supreme Court and long after the expiration of the fifteen (15) day deadline provided for by the Transitional Rules of Procedure of the State Bar.[2]

On January 27, 1995, petitioner filed an untimely petition in the California Supreme Court, seeking relief from the Stipulation transmitted to the California Supreme Court on November 16, 1994.[3] Petitioner requested that the Court recuse itself and refer the matter to an appellate panel to resolve the

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[2]Former Rule 407(c) of the Transitional Rules of Procedure of the State Bar provided as follows: "Once adopted by the hearing judge, the stipulation shall bind the parties in the proceedings to which it relates unless withdrawn or modified with approval of the judge, upon good cause shown and upon application of a party made within fifteen (15) days of service of the order approving stipulation."

[3] Rule 952(a) of the California Rules of Court requires a petition for review of a State Bar Court decision be filed within 60 days after the decision is filed with the Clerk of the Supreme Court.

issues posed in her petition. In addition, she requested a stay of the proceedings with respect to the Stipulation until the issues raised in her petition had been resolved.

The California Supreme Court denied the petition, application for a stay, and motion for recusal by an Order issued March 16, 1995, in case number S043344. Petitioner now seeks a writ of certiorari to review the California Supreme Court's Order.

B. Statement of Facts

The following is a summary of the facts as set forth in the Stipulation.

In early 1990, petitioner entered into an agreement with an organization of non attorneys called Living Trust Seminars. Petitioner was engaged to draft durable power of attorney, revocable trust and related estate planning documents for the clients of Living Trust Seminars. Living Trust Seminars

advertisements were deceptive, confusing and misleading in suggesting that Petitioner and/or a law office was sponsoring the seminars.

United American Trusts, another entity also owned and operated by non attorneys, made arrangements with Living Trust Seminars for estate planning document preparation. At least two clients paid United American Trust for estate planning services. United American Trust forwarded information obtained from the clients to Living Trusts Seminars. Petitioner, without having any personal contact with these clients prepared trust and other estate planning documents, acting in the capacity of attorney for the clients. The documents were returned to the clients by United American Trusts via Living Trusts Seminars. These clients, when their spouses passed away, discovered that the documents prepared by Petitioner did not meet their estate planing wishes.

In one client's matter, more than eight trust beneficiaries were given title to the surviving spouses residence instead of providing her with clear title as she had wished. In a second matter a will drafted by Petitioner was found to be invalid because it was not properly witnessed.

Petitioner's relationship with Living Trust Seminars aided their unauthorized practice of law. Moreover, petitioner failed to act competently when performing legal services for the clients of United American Trusts. Also, by representing both husband and wife in their estate planning matters, petitioner represented clients with adverse interests.

The Stipulation and State Bar Court Order issued thereon, recommended that petitioner be suspended from the practice of law for a period of two (2) years, that the execution of the suspension be stayed, that petitioner be placed on probation for two

(2) year with conditions. The California Supreme Court approved these recommendations in an Order issued March 16, 1995.

REASONS FOR DENYING WRIT

A. The California Supreme Court's Determination that Recusal Was Not Appropriate and Its Subsequent Order Imposing Discipline Does Not Raise Due Process or Important Federal Questions

Review on a writ of certiorari is not a matter of right and will be granted only where there are special and important reasons. Rule 10, Rules of the Supreme Court of the United States. None of the reasons set forth in rule 10 are available here. There is no decision by a federal appellate court (rule 10(a)); the California Supreme Court decision at issue does not conflict with that of any other state court of last resort or of a federal appeals court (rule 10(b)); and

the California Supreme Court decision at issue does not decide an important federal question of federal law that should be decided by this Court, nor is it in conflict with any decision of this Court (rule 10(c)).

The absence of a *mandatory* statutory recusal mechanism applicable to the justices of the California Supreme Court does not make a showing of bias unnecessary. As in any case, it was entirely appropriate for the California Supreme Court to be given the opportunity to decide the issue of alleged bias of its individual members for itself. Flangas v. State Bar of Nevada (9th Cir. 1981) 655 F.2d 947, 950.

B. Petitioner's Claims Regarding the "Partisan" Nature of the Supreme Court Are Groundless and Recusal is Unnecessary

Petitioner contends that the California Supreme Court is biased in favor of the State Bar, and that it cannot therefore carry out, in a disinterested manner,

its adjudicative role in reviewing and making final determinations with respect to the discipline of attorneys in the State of California. (Petition, pp. 8-9.) In support of these contentions, petitioner argues that the California Supreme Court's role in appointing State Bar Court judges and awarding costs to the State Bar are in conflict with its adjudicative role. (Petition, p. 7, fn. 2.) Petitioner cites this Court's decision in Aetna Life Insurance Co. v. LaVoie (1986) 475 U.S. 813 for the proposition that, because of this supposed conflict, the California Supreme Court should have recused itself from reviewing the State Bar Court's approval of the Stipulation and recommendation of discipline in her case.

Petitioner's reliance on Aetna, supra, is unavailing. In Aetna, the Court held that the Due Process Clause of the Fourteenth Amendment required that an Alabama Supreme Court justice be

recused for bias in circumstances where the justice had a " . . . direct, personal, substantial, pecuniary interest . . ." in the outcome of a particular case. Aetna Insurance Co. v. LaVoie, supra, 475 U.S. at 822. In the instant case, rather than presenting evidence to demonstrate a direct, personal, substantial pecuniary interest in her case, petitioner merely proffers highly speculative and conclusory allegations of bias.

C. **Petitioner's Attempt to Withdraw Her Consent to the Stipulation Was Insufficient, Untimely and Ineffective**

Former rule 407(c) of the Transitional Rules of Procedure of the State Bar[4] provided as follows: "Once adopted by the hearing judge, the stipulation shall bind the parties in the proceedings to which it relates unless withdrawn or modified with approval of the judge, upon good cause shown and upon application of a party made within fifteen (15) days of service of the order approving stipulation." (Emp. added.) The State Bar Court hearing judge approved the Stipulation on September 28, 1994. The proof of service attached to the Order indicates that it was

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[4]This rule corresponds with, and is essentially the same as, current rule 135(b) of the Rules of Procedure of the State Bar (effective January 1, 1995). The Rules of Procedure of the State Bar are published in volume 23, West's Annotated California Codes (Rules of Court) part 2.

served on petitioner, via her attorney, on September 29, 1994. Petitioner allowed several months to pass before she acted to withdraw her consent to the Stipulation by first sending letters to both the State Bar Court and the California Supreme Court in early December, 1994, and then by filing a petition for review in the California Supreme Court on January 27, 1995.

D. Petitioner's Claims Regarding Conflict of Interest and Financial Interest of the Hearing Court Judge and Trial Counsel are Frivolous, Unsupported by any Evidence, and Wholly Without Merit

Petitioner next argues that because the State Bar Court failed to disclose its secret financial interest in the outcome of her case, her consent to the Stipulation was "uninformed" and the Stipulation should be voided. (Petition, pp. 11-14.)

Complimenting the lack of relevant legal authority supporting her theory, petitioner presents no facts to demonstrate that an undisclosed financial interest exists. She relies instead on vague, conclusory and false allegations concerning the structure and function of the State Bar disciplinary system. Specifically, petitioner contends that the State Bar Court is operated from funds obtained, in the form of costs, from respondents in disciplinary proceedings. (Petition, p. 7, fn. 2.) This is perhaps a reference to the fact that in 1986, the California Legislature provided that costs of disciplinary proceedings shall be imposed as part of any order imposing discipline of a public reproval, suspension or disbarment. Cal. Bus. & Prof. Code § 6086.10. The fact that disciplinary costs are collected and paid into the treasury of the State Bar to help finance its regulatory activities in no way supports petitioner's assertions that these funds

are used for the State Bar Court Judges' private purposes. The salaries of State Bar Court Judges are set by statute, (Cal. Bus. & Prof. Code § 6079(d)), and are not dependent, to any extent, upon the collection of disciplinary costs.[5]

E. **The Current Rules of Procedure of the State Bar Court Provide Petitioner With an Opportunity to Challenge or Modify Costs Awarded to the State Bar Pursuant to Business and Professions Code Section 6086.10.**

Petitioner likens the stipulation to a plea bargain agreement in a criminal matter and claims that because the Rules of Procedure of the State Bar

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[5]It should be noted that monies collected from attorneys found culpable of misconduct comprise only a tiny fraction of the State Bar's treasury. The revenue received from disciplinary costs assessed against attorneys, as a percentage of total annual membership fees collected, ranged from .1% to .7% of the total annual membership fees collected in the calendar years from 1990 to 1994.

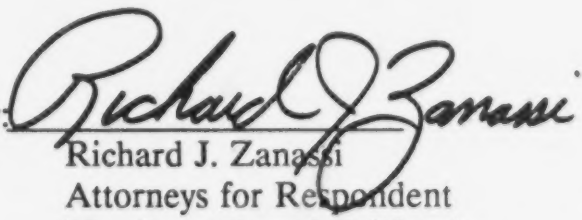
Court were amended prior to the effective date of the disciplinary action Ordered by the California Supreme Court, she is entitled to be relived of the effect of the stipulation. (Petition, p.14.) Rule 462 of the former Transitional Rules of Procedure in effect at the time Petitioner entered into the Stipulation set forth the procedure to be followed by a disciplined attorney when seeking relief from or an extension of time in which to pay costs awarded pursuant to Business and Professions Code section 6086.10. The current procedures, as set forth in Rule 282 of the Rules of Procedure provide that "this rule does not authorize a challenge to the State Bar's determination of "reasonable costs" under Business and Professions Code section 6086.10(b)(3)." The current rules provide petitioner with the same, if not more, opportunity to seek relief as was provided under the former rules.

CONCLUSION

Petitioner has failed to present any facts to support her request for a writ of certiorari, nor has she demonstrated that any of the actions taken by respondent in connection with her case were improper. For these and all of the foregoing reasons, respondent the State Bar respectfully requests this Court to deny the petition for writ of certiorari.

DATED: May 9, 1995 Respectfully submitted,

Diane C. Yu
Lawrence C. Yee
Richard J. Zanassi

By: 
Richard J. Zanassi
Attorneys for Respondent
The State Bar of California

Supreme Court, U.S.
FILED
MAY 18 1995
CLERK

No. 94-1655

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1994

EVANGELIN MARIE MILLER

Petitioner

vs.

THE STATE BAR OF CALIFORNIA

Respondent

REPLY TO BRIEF IN OPPOSITION

EVANGELIN MARIE MILLER
2255 Watt Avenue, Suite 110
Sacramento, Ca. 95825

1-916-483-3801

Petitioner Attorney *Pro Se*

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In reply to the Brief of Respondent in Opposition to the Petition for a Writ of Certiorari, Petitioner Attorney proffers that the admissions by the State Bar of California of its lack of disclosure of the material facts concerning its employment of the judges to its State Bar Court, its employment of the probation personnel, its creation, ownership, and maintenance of a State Bar Court wherein adjudications of guilt result in assessment of

the salaries and benefits of its employee judges, prosecutors, investigators, and probation personnel against each accused and additional funds for other State Bar programs and its lack of disclosure of its demand for $1,556.00, consisting of $473.00 for the salary of its employee judge of its State Bar Court, $309.00 for its prosecutor's salary and benefits, and $774.00 for the salary and benefits of its employee investigator, require that such unfair and deceptive practices not be condoned and that the judgment based on solely a stipulation to which consent was withdrawn prior to its approval by the California Supreme Court be reversed for lack of an informed consent. Petition, hereinafter "P":5. "Section(s)" refers to sections of the California Business and Professions Code.

The identification of the claimed costs sent by the State Bar six weeks after the stipulation was signed and one month after one of its "Judges" to its "State Bar Court" approved it for transmission and approval by the California Supreme Court is attached hereto as Appendix A-1-A-4.

Petitioner tenders 1) The absence of recusal rule, statute,

constitutional provision, case law to permit an aggrieved party to challenge a State Supreme Court Justice for cause implicates a denial of a meaningful opportunity to be heard in a meaningful manner concerning the due process right to a fair and impartial adjudicator, 2) the use by the California Supreme Court of a subjective recusal standard similar to that declared unconstitutional by this Court in **Aetna Life Insurance Company v. La Voie** 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988) offends the Supremacy Clause and due process of law, 3) A State Supreme Court which appoints employees to a privately financed prosecuting party and by summarily denying all petitions of all accuseds, awards the other party monies to recoup the private salaries and benefits of its appointees and their co-employees and sums for other programs of their appointee's employer is occupying a dual role- one partisan for a party and one adjudicative. This provides a temptation for it to not hold the balance nice, clean, and true between the prosecuting party and the accused and offends due process of law, 4) When the assessment of the salaries and benefits of the California Supreme

Court's appointee to the prosecuting party ($473.00 for signing a stipulation when there are no proceedings), and for their appointee's co-employee prosecutor of $309.00 and for their appointee's co-employee investigator of $774.00 are claimed costs, when there are no costs for a stipulation which is executed without proceedings, and a claim salary and benefits is "costs" is never disclosed before, during, or after a stipulation is signed and approved by a State Bar employee and is never disclosed until after the time the prosecuting party's rules specify for setting aside the stipulation, does not the lack of disclosure that costs is not costs, but the salaries and benefits of the prosecuting party's co-employee prosecutors, investigators, and judges, such a lack of disclosure that the time to set aside a stipulation is tolled from the date the party receives the actual assessment of their salaries and benefits?, 5) When a stipulation provides that, "The Supreme Court must enter an order effectuating the terms and conditions of this stipulation before any stipulation for suspension, actual or stayed, will be effective," P: 3-4, may not a party withdraw her consent prior to approval by the California Supreme Court ?, 6)

Is not the lack of disclosure that costs are not costs, but the salaries and benefits of co-employee judges, prosecutors, and investigators, whose mutual private employment relationship and financial interest in the proceedings is never disclosed, such a material omission of substantial facts that a stipulation induced by such a lack of disclosure must be voided for lack of an informed consent?, 5) When a privately financed party runs and owns its own private court financed, in part, from the funds imposed by finding all accuseds guilty, and it never discloses the "Court" it claims exists is owned, run, managed, and staffed by its private employee judges, investigators, prosecutors, probation personnel and fueled by funds obtained by finding all accuseds guilty, is not this material omission of substantial facts such a lack of disclosure that a stipulation induced by such a lack of disclosure must be voided for lack of an informed consent? 6) When a party which makes its own law for its private court changes the law relied on after a stipulation is signed but before it is approved by the constitutional court by abolishing the remedy available to contest it assessing its employee judges, investigators, and

prosecutors' salaries and benefits upon an accused as claimed "costs," does not such a change in the law require that a party's consent to the stipulation be permitted to be withdrawn and the judgment reversed?

I.

The Partisan Role of the California Supreme Court Role Offends Due Process of Law

This Court in **Keller v. State Bar of California** __U.S.__, 110 S. Ct. 2228, 110 L.Ed 2d. 1 (1990), overruling 255 Cal. Rptr. 542 (1989), reversed the decision of the California Supreme Court holding that the State Bar of California was akin to a governmental entity. This Court was unaware that the California Supreme Court issued that ruling after it had agreed with the State Bar of California to create its employees into a court to license the State's attorneys in order to alleviate the workload of the California Supreme Court. Refer P. Appendix B-1, and sections 6079.1(a)(d) and 6086.65. Pursuant to that agreement, the California Supreme Court ruled the State Bar was a governmental entity. This cleared the way for the State Bar employees to become a court with judges selected, hired and paid

by the State Bar and appointed by the California Supreme Court to become the licensing "Court."

Had this court been aware of the undisclosed partisan role of the California Supreme Court in having already agreed to appoint and oversee employees to the State Bar to be judges to its "State Bar Court" to license the state's attorneys, the unusual ruling it made claiming the State Bar was a governmental entity would have been seen in its undisclosed, but partisan light. By the time this Court held the State Bar was not a governmental entity, the California Supreme Court had already created its appointees to the State Bar into the private, partisan, and financially interested attorney licensing court and delegated its judicial power to disbar and suspend the State's attorneys to them while authorizing them to collect their salaries and benefits and those of their co-employees and to obtain funds for other programs of their State Bar employer by finding each accused attorney guilty. While this Court held the State Bar was not a governmental entity, the California Supreme Court had already created its employees appointed by it into a Court. Appendix B-

1-B-2 to Petition and sections 6086.5, 6079.1(a)(c).

The State Bar suggests that a State Supreme Court Justice is disqualified under this Court's **Aetna, supra**, decision only if he has a "direct, personal, substantial, pecuniary interest." Brief in Opposition, hereinafter "BO":14. Petitioner submits this does not define nor limit the principal. An adjudicator with an extrajudicial relationship with a financial beneficiary of its orders is just as tempted not to hold the balance nice, clean, and true as one who financially benefits himself from a ruling. **Liljeberg v. Health Services Acquisition Corp**. 486 U.S. 847, 108 S. Ct. 2194, 100 L. Ed. 2d. 855 (1988).

The act of appointing nine employees to the State Bar, when, the State Bar has the statutory authority to prosecute attorney disciplinary proceedings (sections 6040, 6043, 6044, 6090, 6092.5) involves the Justices of the California Supreme Court appointing employees to a privately financed party who require a minimum of $125,000 each annually for their base salaries. P Appendix B-1, sections 6079.1, 6086.65. It involves appointees who must be paid by the prosecuting party from its

private funds: "... the board [of the State Bar] shall fix and pay [them] reasonable compensation and expenses and provide adequate supporting staff and facilities." P. Appendix B-1 and section 6079.1(d). It involves appointees who are housed, trained, paid, provided their retirement, medical, dental plans, bonuses, annuities and profit sharing plans by the prosecuting party who also selects them, since all other persons are excluded from providing any input in the selection process to the California Supreme Court. P. Appendix B-1, sections 6079.1(c). 6079.10. It involves the only constitutional court awarding costs, which are not disclosed to be "costs," but which are the salaries and benefits of its appointee ($473.00 for signing a stipulation without any proceedings), and its appointee's co-employee prosecutor ($309.00), and their mutual co-employee investigator ($774.00) from the accused for a simple stipulation and additional sums for their salaries and benefits on a time expended basis, by denying all petitions of all accuseds since 1989, taking each accused's license to practice law, and preventing access to a disinterested court to over 3,091 attorneys whose licenses have been taken in less than

four and half years for a net financial benefit of in excess of fourteen million dollars for its appointees and their employer. Appendix A-1-A-4, P:8.

Whether these sums, as claimed by the State Bar, are less than one percent of its annual revenues, is irrelevant. BO:17, ft. 5. The incentive to find guilt, where none exists, is engendered by the existence of the financial motivation to recoup the salaries and benefits of its appointees to a party by just denying all petitions of all accuseds. Since its appointees would not risk being fired by their prosecuting party employer by finding an accused innocent wherein such an attorney might collect his reasonable expenses of defending from their employer and deplete its funds, rather than make money for it, it is a foregone conclusion that every attorney has been automatically found guilty since 1989 and all petitions of all accuseds have been automatically denied by the California Supreme Court since 1991, each such denial containing an order for the accused to pay its appointees' employer. P:7-8; P. Appendix B-1-B-2, sections 6079.1, 6086.10(d). That the Petitioner, an attorney with no

record for twenty three years who is an expert in Estate Planning, was induced to stipulate to a guilt she did not have and which could not be found by an impartial tribunal was in reliance that no monies would be demanded and that probation would be easily fulfilled and monitored by an impartial court and probation department. Those representations of the State Bar are false.

Similar to the case of a Board of a Bar Association who adjudicates guilt of attorneys in order to recoup the investigative costs of the Association, the State Bar's judges adjudicate guilt to obtain monies to recoup their and their co-employee prosecutors' and investigators' salaries and benefits for their State Bar employer and do so in order to keep their jobs and in order to obtain funds to distribute in their role for their employer in distributing funds to the Public in its Client Security Fund. P. Appendix B-1-B-2, sections 6086.10(b)(3), 6079.1(d), 6086.13.

The California Supreme Court occupies an executive role for the prosecuting party and financial beneficiary by appointing and overseeing nine employees to it, who are preselected by the prosecuting party and who require over one million dollars a year

for their base salaries. Appendix B-1 and section 6079.1(c)(a). It recoups the salaries and benefits of its appointees, provides them housing, vacations, retirement plans, and awards monies for its appointees to use for their salaries and benefits and those of their co-employees and awards funds for them to distribute to the Public in their role for their employer's Client Security Fund, by denying all petitions of all accuseds and letting their appointees find, as they have done, all accuseds guilty and taking or impairing each attorney's license to practice law. **In the Matter of Ross** 656 P.2d.832, 99 Nev. 1 (Nev. 1983). P. Appendix B-1, B-2 and sections 6079.5, 6086.5, 6079.1, 6086. 65, and 6086.10.

If a judge finds guilt so as to awards monies to reimburse the salary and benefits of his wife or business associate for the employer of his wife or business associate, under the State Bar's reasoning, the judge is not disqualified, because the judge does not have a direct, personal, substantial, pecuniary interest in the outcome. Appointing and overseeing the highest paid employees to a party and awarding their employer monies to pay them their salaries and benefits by adjudicating a case against the other party

appears to be as serious a conflict of interest as would be decision-making for the employer of a judge's wife or business associate. As stated by H. Simon, Administrative Behavior 13-14 (1957), quoted in W. Gellhorn and C. Byse, Administrative Law: Cases and Comments 881 (5th Ed. 1970), "the intangible effect of institutional loyalty must not be underestimated simply because it is difficult to quantify." As Justice Jackson said, "Men are more often bribed by their loyalties and ambitions than by money." **United States v. Wunderlich** 342 U.S. 98, 103, 72 S. Ct. 154, 157, 96 L. Ed. 113 (1951).

The Petition should be granted to determine what kind of a partisan role for a party and financial beneficiary a judge may occupy without offending the due process criteria set forth by this Court in **Aetna, supra.**

II.

The Lack of Disclosure of the Non-Existence of a Real Court and Judge and of the $1,556.00 for Salaries and Benefits is So Substantial that the Judgment Must be Reversed for Lack of an Informed Consent

The State Bar does not provide notice to an accused

attorney it is collecting its employee judges, prosecutors, investigators' and support staff's salaries, benefits, and perks as claimed "costs" as part of a stipulation or a guilty adjudication or that the State Bar Court and judges to it are not a Court or judges, but just State Bar hired employees, before it secures the stipulation or guilt adjudication and lets the period to set aside the stipulation or proceedings under its rules expire. P: 3-4. It is in no law, no rule, no public document. It is deliberately omitted from the State Bar's pre-printed stipulation which has as its claim that 'costs' for the Office of Trial Counsel is the most that may be imposed later. It never discloses, nor does the California Supreme Court, that its claim to 'costs' is not costs, but the actual costs and the salaries and benefits of the State Bar's employee judges appointed by the California Supreme Court, and their co-employee investigators, prosecutors, and other support staff on a time-expended basis. P:3-5. Appendix A-1- A-4.

The attorney signed a stipulation on August 12, 1994 which stated, "the agreed disposition is eligible for costs to be awarded to the State Bar. (Bus. & Prof. Code s. 6086.10 and

6140.7). Petitioner has been notified of his or her duty to pay costs. The amount of costs assessed by the Office of Trial Counsel will be disclosed in a separate cost certificate submitted following approval of this stipulation by a hearing judge. The amount of costs assessed by the State Bar Court will be disclosed in a separate cost certificate submitted upon finalization of this matter." P:4. One reading this would assume that the Office of Trials, the prosecuting unit of the State Bar, is going to itemize actual costs which are allowable and are limited to its out-of-pocket expenses. Since the stipulation is signed without any proceedings ever being commenced, the amount of such costs are zero. In fact, the actual costs the State Bar listed were zero. Refer Appendix A-1-A-4. But it claimed $1,556.00 for itself anyway. Appendix A-1.

Since a party must file a memorandum of costs within ten days of entry of a judgment under civil law, and the other party has ten days to move to tax those costs with a motion and a hearing before the judgment may become final, one would have assumed that following the State Bar's employee judge's

approval of the stipulation on September 29, 1994 that the Office of Trials was required to file its claimed costs by October 19, 1994. Appendix to Petition D-12-13. Instead it filed nothing. It waited until November 16, 1994 to simultaneously file its recommended pre-printed order for the California Supreme Court to sign approving the stipulation with its claim of "costs" of $1,556.00, all of which is salaries and benefits of its employee judges, investigators, prosecutors. P:4-5.

What is more disturbing is that the "Court" is also assessing its "costs." It demands for itself $473.00. Appendix B-3. Since when does a Court send out bills to parties to pay its costs? Appendix A-4. One might understand a court imposing sanctions after a notice and a hearing, but a Court *ex parte* sending out a demand to pay its costs is most unusual. What is even more unusual is that this Court is demanding $473.00 for itself for a "Level One" assessment of "Reasonable Costs of the Office of the State Bar Court." Appendix A-4. The "Level One" Assessment states that it is for a "stipulated disposition reached prior to filing of a Notice to Show Cause." Looking at the Level

Two, Three, and Four assessments on the form, the "Court's" assessments of its "costs" imposed on a party increase depending on the amount of time its employees spend on the case and when the disposition is reached with a separate category for "resignations of a member with charges pending" as the highest category of assessments of this "Court" listed. Appendix A-4.

This is the first indication to an attorney that something is not right about this Court which the attorney has been misled into believing in the stipulation and the conduct of the prosecutors and investigators and "judges" is a real court with a real judge. This "Court" is reimbursing itself for the time its judge and employees spend on a case for their salaries and benefits against just the accuseds. This " Court" even has a level of assessment system telling itself how much money to charge each accused for itself. The form makes clear that the prosecuting party never has to pay it. Its form is just to impose monies for itself against accuseds. How would a judge of this Court ever find an accused innocent if he can only impose his salary and benefits against accuseds and never the prosecutor or his

employer? Since 1989, when the California Supreme Court appointed these $125,000 a year "judges" to be employees of the prosecuting party, no "judge" of this State Bar Court has ever found an accused innocent. 3,091 licenses have been taken in less than four and a half years. Appendix A-5.

The State Bar "Court" awards itself more and more money as more time is spent on an accused's case by it. In sum, the more an attorney insists on his innocence, the more the "Court" is going to punish him by increasing the amount it assesses for itself as its "costs" against the accused." All of a sudden the attorney realizes the truth. This is no Court. This is no judge. The clause in the stipulation stating that, "The amount of costs assessed by the State Bar Court will be disclosed in a separate cost certificate submitted upon finalization of this matter," P:4, does not refer to the Court assessing the costs for the prosecuting party after the Office of Trials claims its costs **It refers to it assessing costs, which are its salaries and benefits, for itself!** (Emphasis added) The clause does not refer to this State Bar Court adjudicating fairly any claim of the Office

of Trials claiming its costs, but it filing and demanding its own costs with it and making sure its and their "costs" are their respective salaries and benefits imposed on each accused.

Two months after the stipulation is signed and one month after the "judge" to the "State Bar Court" approves the stipulation, the judge discloses he is not a judge, and there is no Court. P:3-5, Appendix A-4. He is an employee of the prosecuting party who is paid and employed by it and who awards himself or herself his salary and benefits and that of his co-employee prosecutors and investigators. Appendix A-1-A-4. The attorney realizes she has agreed to probation for two years and a non-existent guilt with a non-existent court, non-existent judges, and a non-existent probation department which is owned and run by the prosecuting party and which awards itself money for the salaries and benefits of its employee judges, prosecutors, investigators, and probation staff each time it finds an accused guilty. Appendix A-1-A-4.

CONCLUSION

Since there was no real court or judge in the State Bar

Court; the $1,556.00 "costs" was not disclosed until after the fifteen day period to set aside the stipulation within the party's "Court" had already expired; the "costs" are not costs, but the salaries and benefits of State Bar employee judges, investigators, and prosecutors; the prosecuting party changed the law relied on; Petitioner timely withdrew her consent prior to the stipulation's approval by the California Supreme Court and did so for good cause, the judgment approving the stipulation should be reversed for lack of an informed consent and a neutral adjudicator.

RESPECTFULLY SUBMITTED,

Dated: May 17, 1995

EVANGELIN MARIE MILLER
Petitioner Attorney *Pro Se*

FOR STATE BAR COURT

FILED NOVEMBER 16, 1994

STATE BAR COURT
CLERK'S OFFICCE
LOS ANGELES

STATE BAR COURT
OF THE STATE BAR OF CALIFORNIA
1149 SOUTH HILL STREET 5TH FLOOR
LOS ANGELES, CA. 90015

In the Matter of

EVANGELIN MARIE MILLER

Member of the State Bar

CERTIFICATE OF COSTS CASE NO. 91-0-08839

Imposition of the following costs are recommended pursuant to Business and Professions Code Section 6086.10(b)(1)-(3):

1. Transcript Costs and Court Reporter's Fees.....1..$.....0
2. Taxable Cost Recoverable (see attached Statement(s) of Costs)
   a. Deposition Costs.....2a.$.....0
   b. Service of Process Costs.....2b.$.....0
   c. Witness Costs.....2c.$.....0
   d. Court-ordered Transcripts.....2d. $.....0
   e. Exhibit Costs.....2e. $.....0
   f. Court-Ordered Expert Costs.....2f. $.....0
   g. Other Taxable Costs.....2g $.....0

3. Reasonable Costs (see attached Statement(s) of Costs)

a. Office of Investigation Costs.....3a. $ 774.00
b. Office of Trial Counsel Costs.....3b. $ 309.00
c. Office of State Bar Court Costs.....3c. $ 473.00

TOTAL COSTS.....TOTAL $1,556.00

I, Judy Duffield, Clerk of the State Bar Court,do hereby certify that, to the best of my knowledge and belief, the above costs, naed on this certificate and the accompanying cost statements are correct as provided by rule 461, Rules of Procedure of the State Bar of California.

Judy Duffield
Clerk of the State Bar Court

Date: November 22, 1994

By: (signed)

CHARLES NETTLES
ADMINISTRATIVE
ASSISTANT

Certificate of Costs Submitted by the Office of Investigation and the Office of Trials of the State Bar of California

In the Matter of **Evangelin Marie Miller, No. 48332**
Case Number(s) **91-0-08839; 92-0-20580**

Pursuant to Business and Professions Code, it is requested that **Evangelin Marie Miller,** a member of the State Bar of California be ordered to pay the following costs.

TAXABLE COSTS

1. Deposition Costs . . . . . $_____
2. Exhibit Costs..... _____
3. Court-ordered Expert Costs..... _____
4. Service of Process..... _____
5. Court-ordered reporting and Transcripts..... _____
6. Witness Costs..... _____
7. Other Reasonable Costs..... _____

Total Taxable Costs ..... _____-0-

REASONABLE COSTS OF INVESTIGATION, HEARING, AND REVIEW

1. Pursuant to State Bar Approved Models
   a. Office of Investigation . . . .$ 774.00
   b. Office of Trials.....$ 309.00
2. Extraordinary Costs
   a. Office of Investigation . . . .$_____
   b. Office of Trials.....$_____

Total Costs of Investigation, Hearing, and Review....$1083.00

TOTAL OF ALL COSTS.....$1,083.00

Dated: October 14, 1994 BY: (SIGNED)

_____
ADMINISTRATIVE ASSISTANT

STATEMENT OF COSTS

Office of the State Bar Court of the State Bar of California

In the Matter of EVANGELIN MARIE MILLER
Case Number(s) 91-0-08839

Pursuant to Business and Professions Code section 6086.10, it is requested that Jessie Shiow-Jiuan Ho, a member of the State Bar of California, be ordered to pay the following costs.

Reasonable Costs of the Office of the State Bar Court

1. **Level One Assessment** $473.00
   [Stipulated disposition reached prior to filing of a Notice to Show Cause]

2. **Level Two Assessment** . . . . . $_____
   [Stipulated disposition reached prior to time of trial]

3. **Level Three Assessment** . . . . . $_____
   [Stipulated disposition reached at time of trial or trial not exceeding one day is conducted]

4. **Level Four Assessment** . . . . . $_____
   [Trial exceeding one day is conducted]

5. **Resignation of Member with Charges Pending** $_____

Judy Duffield
Clerk of the State Bar Court

Date: November 16, 1994

By: (signed)

CHARLES NETTLES
ADMINISTRATIVE
ASSISTANT

LAWYERS DISCIPLINED* AS OF JULY 31 1994

YEAR/ TYPE	Disbarred	Disciplined with actual suspension	Disciplined with probation without actual suspension	Public Reprovals	Private Reprovals	Resigned with charges pending
1988	51	89	21	29	22	61
1989	51	102	26	45	24	90
1990	67	212	59	54	50	80
1991	64	219	76	34	77	94
1992	40	199	98	60	94	111
1993	53	218	124	68	112	95
1994 to 7/31	36	115	75	27	75	67
TOTAL for years 1989 through 7/31/94	311	1065	458	288	432	537
TOTAL disciplined for years 1989 through 7/31/94	3091	Total minimum administrative costs awarded to the State Bar, once Notice to Show Cause is issued (based on $4500.00 average per case)	$11,965,500.00	Total minimum tying conditions costs as a result of State Bar action (Based on $750.00 average per case)	$2,085,000.00	

*These statistics count individual members (as opposed to cases involving members or orders within cases) and use the effective date of the final Court order imposing the discipline to determine the date of discipline imposed (as opposed to the date the order was filed)